IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3029 OF 2006

Shri Pandurang Nayku Patil & Anr.. Petitioners
(Orig.Plaintiffs)

Versus

Shri Shamram Bhimrao Patil & Ors ..Respondents
(Orig.Defendants)

Shri T.S. Ingale for the Petitioners
Shri A.B. Borkar for the Respondents

CORAM : S.R. SATHE,J.
DATED : 31/07/2007

P.C. :-

1. Heard Shri Ingale learned Advocate for the Petitioners.

2. Perused the papers.

3. Brief facts giving rise to this Petition are as under :-

The suit lands were initially owned by the original Plaintiffs. On 03/05/1967, he sold the suit lands to the defendants for Rs.2000/- and handed over the possession. However, in the Sale Deed it was mentioned that if the amount of Rs.2000/- is paid by the original Plaintiffs to defendants then defendants shall reconvey the said property to Plaintiffs. In the year 2005, Plaintiffs filed suit alleging that the suit

property was mortgaged to Defendants and as such, he prayed for redemption of the mortgage and prayed that defendants be directed to reconvey the property.

4. On the date of the filing of the suit, the Plaintiffs also filed the application Exh-5 and submitted that defendants be restrained from creating any third party interest in the suit property till disposal of the suit.

5. The defendants opposed the said application and contended that the transaction between Plaintiffs and defendant was of sale out and out and Plaintiff has no right to file present suit. They also contended that in a suit filed by them the Plaintiffs have in fact admitted that the transaction dated 03/05/1967 was of sale out and out. The Defendant, therefore, prayed for the dismissal of the application.

6. Learned Trial Judge after hearing the arguments advanced by the learned Advocates of both the sides and perusing the record came to the conclusion that Plaintiff has made out a prima facie case for restraining the defendants from creating third party interest in the suit property till the decision of the

suit and allowed the application.

7. Being aggrieved by the said order the original defendants filed Misc. Civil Appeal No.91 of 2005 wherein the learned Additional District Judge, Ichalkaranji held that Plaintiff has not made out any prima facie case to restrain the defendants from creating any third party interest and therefore allowed the appeal and rejected the application Exh-5.

8. The above mentioned order is challenged by the original Plaintiffs in the present Writ Petition.

9. It is needless to say that in order to issue any prohibitory order against the defendants, Plaintiffs must make out a prima facie case. In the instant case, we find that the original transaction is dated 03/05/1967. The Plaintiff did not take any action till the year 2005. Shri Ingale, learned Advocate for the Plaintiffs strenuously argued before me that in order to avoid multiplicity of proceeding, injunction as prayed be granted. According to him, even if said order is passed, the same is not likely to cause any prejudice to the defendants. He, therefore, submitted that the order passed by the Additional District Judge

be set aside and application Exh-5 be allowed.

10. It is true that normally in such type of cases where it is prima facie shown that Plaintiff is having reasonable apprehension that the defendant is likely to dispose of the property or to create third party interest then, in order to avoid multiplicity of proceedings, defendant is restrained from creating third party interest and limited injunction to that effect is granted. However, it is needless to say that for granting any sort of injunction against the defendants, Plaintiffs must make out a prima facie case. In the instant case, if we see application Exh-5 we find that Plaintiff has not even averred that defendants are trying to create third party interest with a view to deprive the Plaintiffs from getting the suit property or with a view to harass the defendants. There is no whisper to that effect in the application Exh-5. So, when such reasonable apprehension is also not shown by the Plaintiffs, it can not be said that the Plaintiff has made out a prima facie case. Shri Ingale, learned Advocate for the Petitioner submitted that he would produce letters to show that the original defendants are trying to raise loan by mortgaging the property to bank. However, it is an admitted position

that even in the District Court the Plaintiff had not produced any such document.

11. It has come on record that earlier there was litigation between the Plaintiffs and defendants and in the said litigation, i.e. Regular Civil Suit No.43 of 2004 and RTS Appeal No.16 of 2004 the original Plaintiff had in fact not pleaded that conditional sale deed has been executed in favour of original defendants. So, considering all these aspects, learned Additional District Judge has rightly rejected the Plaintiff's application Exh-5. Merely because no prejudice is likely to be caused to the defendants, application for injunction can not be granted. In fact, in the instant case, if we see the original document on which Plaintiff has based the present suit, we find that therein it is clearly mentioned that if the amount is not repaid by the Plaintiff to the defendants then defendants would become full owners of the said property and they can deal with the property in the manner which they like. So, when admittedly, the said period of 10 years is over and during last about 30 years the Plaintiff has not repaid the amount, there is no reason why in the teeth of such specific writing and understanding between the parties, the defendants

should be now restrained from doing any particular act in connection with the suit property. Moreover, if at all the defendants decide to enter into any transaction with regard to suit property during the pendency of the suit then it will be obviously subject to decision of the said suit. So, it can not be said that the discretion used by the learned Additional District Judge in rejecting application Exh-5 is arbitrary or that the said order is not legal and correct.

12. In this view of the matter, there is absolutely no necessity to interfere with the order passed by the Additional District Judge by exercising extra ordinary powers under the Writ Jurisdiction.

13. Hence, Petition is rejected.

(S.R. SATHE,J.)